

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15831 of the Methodist Home for the District of Columbia, pursuant to 11 DCMR 3108.1, for special exceptions under Sections 218 and 219 to allow an addition to a community residence and health care facility in an R-1-A and R-5-D Districts at premises 4901 Connecticut Avenue, N.W., (Square 2033, Lot 16).

HEARING DATES: July 21 and September 22, 1993
DECISION DATES: October 6 and 14, 1993, September 7 and
December 7, 1994, December 11, 1996 and
March 5, 1997

ORDER ON REMAND

PROCEDURAL BACKGROUND:

On October 14, 1993, the Board granted the application with conditions by a vote of 3-1 (Carrie L. Thornhill and Paula L. Jewell to grant; Sheri M. Pruitt to grant by absentee vote; Angel F. Clarens opposed to the motion). The Order granting the application was issued on May 27, 1994. On September 7, 1994, the Board denied a motion for reconsideration or rehearing by a vote of 5-0 (Maybelle Taylor Bennett, Susan Morgan Hinton, Laura M. Richards and Angel F. Clarens to deny; Craig Ellis to deny by absentee vote). The order denying reconsideration was issued on September 26, 1994.

On March 20, 1995, a petition for review of the Board's decision to grant the application was filed in the District of Columbia Court of Appeals by the opponents to the application, Methodist Home United Neighborhood Committee (The Committee). During the pendency of the appeal, counsel for the applicants requested a stay of the effectiveness of the Board's order until the court proceedings were complete. The Board granted the stay at its public meeting of December 7, 1994, by a vote of 5-0 (Craig Ellis, Laura M. Richards, Maybelle Taylor Bennett, Susan Morgan Hinton and Angel F. Clarens to grant).

In arguments before the Court, the Office of the Corporation Counsel (the OCC), counsel for the Board, requested that the Court remand the case to the Board for a clarification of the issues related to gross floor area and the required number of loading facilities at the site. The OCC also requested that the case undergo the exceptions process.

In accordance with the request made by the OCC on March 12, 1996 the Court of Appeals ordered that the case be remanded and the final order reviewed under the exceptions process.

On September 19, 1996, the Office of Zoning referred the final order to the parties as a proposed order and afforded them an opportunity to file exceptions by October 11, 1996, with responses to other parties' exceptions due by October 25, 1996.

On October 11, 1996, the Board received a letter from the applicant, the Methodist Home ("The Home") stating it had reviewed the proposed order, fully supports it and therefore has no exceptions. The Board also received a statement from The Committee taking exceptions to the proposed order. In its statement to the Board, The Committee argued that the proposed order should not be adopted for a number of reasons:

- A. The proposed order was not validly issued since the members who heard the case were not on the Board when the order was issued.
- A. The proposed order relies on out-dated information.
- C. The proposed order does not correct the deficiencies explained in The Committee's brief to the D.C. Court of Appeals, namely:
 - 1. The proposed expansion is incompatible with the R-1-A District;
 - 2. The proposed complex will have an adverse impact on the neighborhood;
 - 3. There is no evidence that Ward 3 needs a CRF of the size proposed;
 - 4. Reasonable alternatives to the facility have not been considered;
 - 5. The home will have more than 100,000 square feet and therefore does not comply with the code and licensing requirements.

The Committee requested a new hearing and opportunity to present oral argument.

Prior to considering any exceptions to the proposed order, the record in the application was sent to the following Board members for their review: Laura M. Richards, Angel F. Clarens, Susan Morgan Hinton, Sheila Cross Reid and Maybelle Taylor Bennett.

At its public meeting of December 11, 1996, members stated that they read the record in the application. The Board then denied the request for oral argument and rehearing and reopened the record to receive a report, with calculations, from the Zoning Administrator (ZA) on the gross floor area of the project and the required loading berths.

The Acting Zoning Administrator, Gladys Hicks, filed a report on January 21, 1997 indicating that the subject property is split-zoned R-1-A/R-5-C residential and that the maximum floor area ratio permitted in the R-5-C zone is 3.0.

With regard to the area of the structure and loading requirements the ZA provided the following information:

The total amount of gross floor area of the structure without attic space totals 104,714.37 square feet (0.695 FAR). The attic space totals 11,779.75 square feet. The total gross floor area calculated with the attic space is 116,494.12 square feet (0.773 FAR).

Under Subsection 2201.1, a structure with 100,000 square feet or more requires the following:

- 1 loading berth @ 30 feet deep
- 1 loading berth @ 55 feet deep
- 1 loading platform @ 100 square feet
- 1 loading platform @ 200 square feet
- 1 service/delivery space @ 20 feet deep

The loading requirements for this application are adequately met.

Responding to the ZA's report, The Committee, by letter dated February 3, 1997, argued that the proposed order should be rejected because one of the Board's findings is that the expansion contains less than 100,000 square feet. This is clearly erroneous, as indicated in the ZA's report, and the applicant therefore fails to comply with the code and licensing requirements.

On February 4, 1997, the ZA filed an amended report and computation sheets. In the amended report, the ZA corrected the original report and stated that the current zoning classification of the subject property is R-1-A and R-5-D residential, (not R-5-C as originally reported). She stated that the maximum allowed gross floor area for the R-5-D District is 3.5 not 3.0. The ZA stated that the gross floor area for the basement, first and second floors is 81,999 square feet (0.544 FAR) and the gross floor area which

includes the attic is 93,778.75 square feet (0.622 FAR). She stated that the loading requirements for 93,778.15 (sic) square feet for all other uses becomes:

- 1 loading berth @ 30 feet deep
- 1 loading platform @ 100 square feet
- 1 service delivery space @ 20 feet deep

To explain the reduction in the gross floor area and the changes in loading requirements the ZA stated:

There is a difference, by definition under Section 199 of the Zoning Regulations between cellar area and basement area. Therefore, the lowest level of the existing structure and the proposed addition is predominantly cellar (ceiling height to adjacent grade measurement is less than 4 feet). Cellar area is not counted into the computation for gross floor area. (See definition of gross floor area.) A perimeter calculation should have been done in the initial computations to determine the percentage of linear feet classified as basement against the overall total number of linear feet all around the building. The percentage is then multiplied by the total number of gross square feet at the lowest level (14.4 % x 14,482 Square Feet).

The applicant submitted a letter to the Board dated February 28, 1997 stating that The Home fully supports the conclusions of the ZA regarding the gross floor area of the existing Methodist Home building and the proposed addition. The memorandum correctly states that the loading requirement for the 93,778.75 square foot project will be met by the loading berth, platform and service delivery space that will be provided.

The applicant stated that the ZA's January 27, 1997 report erroneously concluded that the project contained two loading berths because the service delivery space was incorrectly counted as a loading berth. Further, Ms. Hicks erred in including the entire square footage of the lower level of the existing building in the total gross floor area. Only that portion of the level constituting basement space should have been included in the gross floor area. The second memorandum corrected these errors and is fully consistent with the testimony of The Home's architect at the public hearing.

In a statement of The Committee, dated February 26, 1997, responding to the ZA's amended report, The Committee maintained that the applicant has made efforts to manipulate the administrative process to secure approval for the proposed expansion. The

Committee pointed out that the ZA's initial report was consistent with The Committee's position, but the "amended" report is adverse to it. The Committee stated that the two reports are a result of the manipulation by the applicant, the amended report coming after a series of ex parte meetings between the applicant and the ZA. The Committee requested that the Board set the matter for a proper hearing to afford all affected parties a fair opportunity to participate in the application on the record.

The Committee set forth arguments about the gross floor area being over (100,000 square feet and discussed evidence on the record in support of this fact. The Committee argued that the ZA failed to explain how she arrived at the square footage for the lowest level of the structure which she concludes is 13,482 square feet. In her first report she noted that the figure is 24,852.37. The Committee stated that in the second report, the ZA failed to explain how the conclusion was reached that only 14.4 percent of the lowest level was basement. Specifically, The Committee argued that the report does not state: 1) What area of the lowest level the Zoning Administrator found to be "cellar" as opposed to "basement"; 2) what grade the ceiling heights were measured against to reach these conclusions; and 3) what grading plans were used to make this comparison. Without making findings as to these crucial underlying facts, the Board cannot properly conclude that 86 percent of the lowest level is cellar. See Citizen's Ass'n of Georgetown v. BZA, 402 A.2d 36, 45 (D.C. App. 1979) (D.C. Code's requirement that agency fact-finder make "conclusions upon each contested issue of fact" means agency must make findings as to "basic" and "underlying" facts).

The Committee stated that the lack of proper grading plans is especially important. The Board had no basis to evaluate The Home's "cellar" argument because proper plans have not been submitted on The Home's application. When this matter was previously before the Board, the Neighborhood Committee pointed out that The Home had never submitted required grading plans. The Home responded that this was not necessary. The Home's attorneys and architects presumably showed the Zoning Administrator some type of grading plans to persuade her that the ceiling was sufficiently close to the adjacent grade to make 86 percent of the lowest level a "cellar." Those plans, however, are not in the record.

Finally, The Committee challenged the credibility of The Home's architect because his testimony that the expansion would have less than 100,000 square feet was, without explanation, inconsistent with The Home's initial representation that the addition would have more than 100,000 square feet. The Committee maintained that the Board can place no weight on the credibility of The Home's architect, and the proposed order, which is largely founded on his testimony, should be rejected.

At the public meeting of March 5, 1997, the Board considered the record, the reports from the ZA, responses to the reports and the proposed order. The Board determined that the ZA's report of February 4, 1997 is in order and the calculations are in agreement with the record in terms of the structure occupying less than 100,000 square feet of gross floor area, the corresponding loading requirements and the correct zoning category for the site. Based on the gross floor area determinations made by the ZA, the Board concluded that the required loading berth, loading platform and service delivery space provided for on the proposed plans comply with the Zoning Regulations. The Board determined that the ZA's report addressed the only outstanding issues for which additional information was needed. Therefore, the Board adopted the proposed order with changes consistent with the ZA's conclusions. The substance of this order follows:

ORDER

PRELIMINARY MATTERS:

As a preliminary matter, the Methodist Home United Neighborhood Committee filed a motion to strike a letter dated July 27, 1993 received from Acting City Council Chairman John Ray. The Committee alleged that the letter from the Acting Chairman was improper, was an ex parte communication and would have undue and unfair influence on the Board. The letter was received on August 3, 1993 and is marked as Exhibit No. 88 of the record before the Board. The Chairman ruled to leave the letter in the record, that the Board would give the letter the weight it deserved and that the motion to strike was denied.

2. As a second preliminary matter, The Committee moved to strike the report of Advisory Neighborhood Commission (ANC) 3F on the grounds that Commissioner Douglas Mitchell should be disqualified from participating in the proceeding because he had a financial interest in the outcome of the ANC's decision. The Chairman ruled that the Board was not the proper forum for The Committee to challenge the validity of the actions of the ANC, and that the Board would not interfere in the internal functioning of the ANC.

SUMMARY OF EVIDENCE:

1. The subject property is located on the east side of Connecticut Avenue between Ellicott and Fessenden Streets, N.W. The building is known as premises 4901 Connecticut Avenue, N.W., and is located on Lot 16 in Square 2033.

2. The subject property is located in both the R-1-A and R-5-D zoned districts. The boundary line between the two zones is located 100 feet from and parallel to the right-of-way of Connecticut Avenue, except that the property located at the southeast

corner of the intersection of Connecticut Avenue and Fessenden Street is owned by the National Park Service and is not subject to zoning. The R-5-D portion is located on the west side of the site and the R-1-A portion is located on the east side of the site.

3. The subject site contains approximately 3.5 acres of land. The site has frontage of approximately 260 feet on Connecticut Avenue, 410 feet on Fessenden Street, and 255 feet on Ellicott Street. There is a 15-foot building restriction line located along the Ellicott Street side of the property.

4. The existing building on the site was constructed in 1926. The building is owned and occupied by The Methodist Home of the District of Columbia, and has been continuously occupied by The Home since it was constructed.

5. The existing use comprises both a community residence facility (CRF), currently consisting of 52 beds, and a health care center, currently consisting of 26 beds, both located in the same building.

6. In order to proceed with the proposed construction, The Home requires two special exceptions under the Zoning Regulations. The addition to the CRF is regulated under Section 218 of the Zoning Regulations and the addition to the health care facility is regulated under Section 219 of the Zoning Regulations. No variance relief is required.

The combined provisions of those two sections require the Board to find that:

- a. There shall be no other property containing a community-based residential facility for seven or more persons in the same square or within a radius of 1,000 feet from any portion of the subject property.
- b. There shall be adequate, appropriately located and screened off-street parking to provide for the needs of occupants, employees and visitors to the facility.
- c. The proposed facility shall meet all applicable code and licensing requirements.
- d. The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations or the number of similar facilities in the area.
- e. The Board may approve more than one community-based residential facility in a square or within 1,000 feet only when the Board finds that the cumulative effect of

the facilities will not have an adverse impact on the neighborhood because of traffic, noise or operations.

- f. The Board may approve a CRF of more than 15 persons or a health care facility of more than 300 persons only if the Board finds that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area or the District.
- g. The Board shall submit the application to the Director of the Office of Planning for coordination, review, report and impact assessment along with reports in writing of all relevant District departments and agencies.

7. The Board previously has approved applications regarding The Home. In BZA Appeal No. 5656 dated September 18, 1959, the Board approved the enlargement of The Home through the construction of a basement and a two-story addition. The Board approved two additional building expansions, in BZA Order No. 15531, dated December 18, 1973, for a two and one-half story emergency egress stairway and in BZA Order No. 11838, dated February 25, 1975, for a two-story apartment addition.

8. The D.C. State Health Planning and Development Agency (SHPDA) issued a certificate of need dated February 22, 1993 to The Home. The certificate establishes that there is a net need for 387 skilled nursing and intermediate care beds in the District of Columbia, taking into account current licensed nursing home capacity and those beds that have been approved since 1990.

9. The subject application requests approval of an addition to The Home. The addition will raise the total number of beds in The Home from 78 to 114. The addition will contain 24 health care beds, resulting in a total of 50 beds in the health care facility. At present, The Home also contains 52 independent living beds in the CRF. In connection with the addition, the existing health care facility will be converted into 12 independent living beds, resulting in a total of 64 independent living beds in the CRF.

10. The applicant proposes to construct the addition primarily in the northeast quadrant of the site. The addition will contain two stories and a basement to be devoted to the new health care center for The Home. Additional construction will occur at the north end of the existing building and in a portion of the open space now located at the front of the building. The area upon which the addition is to be constructed is primarily devoted to surface parking and outdoor service areas for The Home.

11. The addition to The Home has been designed to match the existing building in terms of facade, building materials, height and roof line. The height of the building is 32 feet 8 inches, as measured at the level of the curb on Connecticut Avenue to the highest point of the roof.

12. At the rear, the addition is 61 feet from the east lot line, more than twice the minimum required rear yard of 25 feet.

13. The building and the addition have a total lot occupancy of 29 percent, substantially below the 40 percent maximum occupancy permitted in the R-1-A District and the 75 percent lot occupancy permitted in the R-5-D District.

14. The building will have a total floor area ratio (FAR) of 0.57. The R-5-D District permits a maximum floor area ratio of 3.5. The R-1-A District does not specify a permitted FAR, but the combination of lot occupancy and height allows an effective FAR of 1.2 in the R-1-A District.

15. All mechanical equipment incidental to the operation of The Home will be located inside the existing building and the proposed addition, except for one cooling tower to be located on the roof of the building and screened from view by parapet walls. The mechanical equipment has been designed and will operate such that it is in compliance with the requirements of the Building Code regarding noise and decibel levels.

16. The landscaping proposed by the applicant to be included along the northern boundary of the property facing Fessenden Street and the eastern boundary of the property facing three adjoining single-family dwellings will constitute an intensive screen which will minimize and tend to eliminate any visual and noise impacts from the proposed addition. In particular, the hedge of Foster hollies, to be planted along the eastern property line, will be planted at an initial height of ten to 12 feet and will grow to approximately 25 feet at maturity. These trees normally grow ten to 15 feet wide and will be planted approximately six feet on center. The ten to 12-foot size is the largest size generally available in sufficient quantities. Given the diameter to which the tree grows, it is not prudent to plant the trees any closer than six feet apart.

17. The Home presently has 48 parking spaces on its property, all located on the R-1-A portion of the site. At the request of the ANC 3F, the applicant's proposed parking layout includes the same number of parking spaces. More than 70 percent of The Home's employees are residents of the District of Columbia.

18. Eighty percent of The Home's employees use public transportation to arrive at the subject property. As a result of the addition, the number of employees coming to the site will increase by only six. It is anticipated that the proportion of the employees using public transportation will remain the same.

19. Surveys done by the applicant's transportation consultant indicated that the peak usage of the existing parking spaces occurs on Sunday afternoon, when 43 of the 48 spaces presently on the lot were occupied. The applicant's transportation consultant estimated that, after the addition is completed, the peak demand for parking will likely increase to approximately 51 spaces. Therefore, one time a week, three cars coming to the site could not be accommodated on-site and will have to seek parking on the street. At all other times, all those persons likely to come to the site by automobile could park in the spaces available on the site.

20. Seven of the proposed parking spaces will be located off the circular driveway which leads from Connecticut Avenue to the main entrance to The Home. A total of 17 parking spaces will be located in two parking areas adjacent to Fessenden Street, N.W. Twenty-four spaces will be located along the driveway which connects Fessenden Street to Ellicott Street near the eastern edge of the property. Eight of those spaces will be located immediately next to and facing the new health care addition on the west side of the driveway. Four of the spaces will be located on the west side of the driveway near the Ellicott Street gate. Twelve of those spaces will be located in three groups of four on the east side of the driveway.

21. The landscaping plan included in the application indicates that all of the spaces located north and east of the building will be screened from adjoining residential property by an intensive landscape buffer primarily consisting of evergreen trees and shrubs.

22. The intersection of Connecticut Avenue with Fessenden Street is signalized. It operates at a level of service "C" during peak hours. The intersection of Connecticut Avenue with Ellicott Street is unsignalized. It operates at a level of service "A" during peak hours.

23. At present, the site has driveway access to Connecticut Avenue, at two points to Fessenden Street and at one point to Ellicott Street. The Ellicott Street driveway is currently closed off and locked with a gate, but The Home is free to use that driveway at any time. Under the proposed plan, the points of access would remain the same. The driveway to Ellicott Street would be controlled by a gate and would serve as an egress only to Ellicott

Street. Use of that gate would be limited to those residents of The Home who own and drive cars, to certain key staff and use by emergency personnel.

24. The report of the applicant's transportation consultant and his testimony at the public hearing indicated that the number of additional trips resulting from the proposed addition to The Home would not significantly change the number of trips traveling through the critical intersections and that the proposed addition would not have an adverse effect because of traffic.

25. The Home presently has 46 full-time employees and 20 part-time employees for a total of 66 employees. With the addition, six full-time employees will be added, for a total of 72 employees. The maximum number of employees on the premises at any one time is 35, when the shifts change.

26. At present, The Home experiences less than one emergency ambulance visit every six months. Even with an increase in the number of health care beds, any projected increase in the number of ambulance visits which requires use of emergency sirens will have a minimal and insignificant impact on the surrounding neighborhood, especially when compared to the emergency traffic out of the D.C. Fire Station located directly across Connecticut Avenue.

27. The applicant stated that The Home is inherently a quiet operation in the neighborhood. The average age of the residents in The Home is 92 years.

28. The loading facility for The Home is located on the basement level, with access from the westernmost driveway on Fessenden Street. The loading area will be enclosed with a roll-up door which will face west towards Connecticut Avenue. All loading and service activities will occur inside the building, except for the actual emptying of the trash dumpster, which will occur immediately outside the door in a location screened from the adjoining residences across Fessenden Street. After it is emptied, the dumpster will be returned to the enclosed loading area.

29. The Office of Planning (OP) by memorandum dated July 15, 1993, and by testimony at the public hearing, recommended approval of the application with conditions. The OP stated that there are no other community-based residential facilities in the subject square or within a 1,000-foot radius of the site and that the applicant had received approval to construct the proposed addition from the SHPDA. The bases of the OP's recommendation are the following:

- a. The number of parking spaces that are proposed for the project will meet the existing needs of The Home as well

as the additional traffic that will be generated by the addition.

- b. Given the proposed dense screen of evergreen trees to be planted on the east property line, the lower half to two-thirds of the proposed addition would not be visible from anywhere in the back yards of the single-family residences to the east initially, and after four years the roof would disappear as well.
- c. Traffic generated by the addition would be minimal over a 24-hour time period and the proposed restrictions on the use of the exit to Ellicott Street would substantially reduce the likelihood of any significant adverse traffic impacts.
- d. The increase in residence from 78 to 114 should have little direct effect on noise levels because of the high average age of residents and the fact that they are rarely outside.
- e. Increased activity on the site would not be of a magnitude that would be disruptive to the community if precautions are taken by the applicant to safeguard all of the nearby property owners.
- f. Upon evaluation of the addition as proposed by The Home and an alternative scheme proposed by The Committee, it is not at all clear that an alternative design scheme would be justified.

The Office of Planning therefore recommended approval of the application incorporating the conditions identified by ANC 3F.

30. The Department of Public Works (DPW), by memorandum dated July 21, 1993 stated that it had no objection to the proposed addition. The DPW believed that the proposed addition will create a slight increase in parking needs which could generally be accommodated by the number of spaces in the existing parking facility. The DPW anticipated that there would be an occasion when the parking facility will be at capacity, and when those times occurred, that the neighborhood would be minimally affected.

31. Advisory Neighborhood Commission (ANC) 3F filed two reports with the Board. The first report, dated June 25, 1993, reflected that the ANC supported the need for a skilled nursing home facility on The Home's property but took no position on the exact plan for the addition, urging The Home and neighbors to continue negotiations. By report dated September 8, 1993, the ANC reported that it had voted to recommend that the Board give

approval with conditions to the application. The ANC proposed 14 conditions to be applied to approval of the application, and a 15th condition which notes that the previous 14 are contingent upon approval of the plans filed by The Home in connection with the BZA application and the implementation of construction in accordance with the Board's order. The conditions cover the establishment of an advisory committee, landscaping, the loading dock, the HVAC and cooling tower, noise, lighting, rodent control, operational features of The Home, maintenance of the public space and the National Park Service parcel, vendor deliveries, construction activities, parking, future construction on The Home's site and bus parking (Exhibit No. 93 of the record).

32. The representative of The Home stated at the hearing that The Home agreed to all of the conditions except condition No. 14, regarding bus parking. The ANC requested that the Board include a condition that The Home not be permitted to park any buses on The Home's property. The Home requested permission from the Board to park a maximum of two, 12 to 16-passenger handicapped accessible buses on the property, with those buses to be parked in the westernmost spaces of the parking area located adjacent to Fessenden Street, in an area best screened from surrounding residences.

33. There were many letters and petitions in support of the application, noting the minimal impact of The Home on the neighborhood, the benefits to the District of Columbia from The Home and the need for the proposed expansion of The Home.

34. The application was opposed by the owners and residents of many of the single-family dwellings which surround the property to the north and east. The neighbors organized themselves into the Methodist Home United Neighborhood Committee (The Committee). While many in opposition expressed their general support for an addition to The Home, they felt that the proposed addition was not suitable. The grounds for the opposition were as follows:

- a. The Home has not always been a good neighbor, causing adverse impacts from time to time because of noise, light and other intrusions on the single-family neighborhood. The identified noise impacts were primarily a result of deliveries to the site and collection of trash, including the emptying of the dumpster, before 7:00 a.m.
- b. The Home has misrepresented its plans and proposals to the neighborhood, including the amount of activity, the location of the principal entrance, the number of employees and the impact of construction on the well being of the existing residents.

- c. The Home has installed "no trespassing" and other signs designed to keep the neighborhood out of The Home's property.
- d. The addition will cause adverse impacts on Ellicott Street because of the re-opening of the driveway access to that street.
- e. The height and bulk of the addition are substantial and institutional in character, causing visual encroachment on the adjoining residences, particularly those immediately to the east.
- f. The location of the driveway connecting Fessenden Street to Ellicott Street at the eastern end of the property will adversely impact the three adjoining residences because of traffic, headlights at night, cars backing up because they could not use the exit gate and a general increase in activity along that boundary line.
- g. The location of the cooling tower will result in audible noise exceeding the allowable standards at the property line.
- h. The addition should be built in the R-5-D portion of the property, since the R-1-A zone is the most restricted single-family portion.
- i. The neighbors retained an architect to prepare an alternative plan, which The Committee alleged would meet the objectives of The Home. The alternative plan would move the bulk of the addition further away from the adjoining properties and would allegedly create less impact on the neighborhood.
- j. The design of the loading facility is not functional.
- k. The plans are deficient in that three loading berths are required and only two are provided.

35. There were a large number of letters and petitions submitted in opposition to the application, essentially echoing the arguments set forth in the Summary of Evidence No. 34 above.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The Home has responded to all the complaints from neighbors by correcting the offending conditions, including the

termination of the trash contractor for failure to respond to The Home's directions not to arrive before 7:00 a.m. The neighbors indicated that issues related to the lights had been corrected by The Home. The design of the addition will further reduce impacts by locating the loading area inside the building further removed from the immediate neighbors.

2. The plans are clear as to the location of the principal entrance. The Home's agreement with the ANC will result in limited use of all the other entrances.

3. The number of employees has fluctuated to a minor degree because of small changes in the actual work force. The differences cited by the opposition are minimal and insignificant in determining the impact of the proposed addition. As noted in Summary of Evidence No. 25 above, the maximum number of employees on the premises at any one time will be 35.

4. The Home is entitled to and must control access to its grounds to protect the safety of its residents. It is not unreasonable for The Home to post its property to deter unauthorized use.

5. The Board credits the expert testimony of the applicant's transportation consultant and the report of the DPW in establishing that there will be sufficient parking to accommodate the needs of residents, visitors and employees of The Home including those required as a result of the proposed addition. The same testimony and report also establish that The Home with the proposed addition will not have an adverse impact on traffic conditions on Fessenden Street, Ellicott Street or their intersection with Connecticut Avenue.

6. The control of egress to Ellicott Street by a card-controlled gate will result in minimal use of the driveway. The site is private property and has not been and will not be a thoroughfare. The Home will post a sign indicating that there is no public access to Ellicott Street. The use of the parking areas and driveway at night will be limited to very few cars. The intensive landscape screen will further reduce any intrusions of noise or light to adjoining property.

7. As set forth in Summary of Evidence Nos. 11 through 14 The Home, including the addition, meets all of the setback and density requirements of the Zoning Regulations. The lot occupancy and FAR are well below the permitted limits and the rear and side yards are substantially greater than the minimum requirements established by the Zoning Regulations.

8. The construction of the addition to The Home in either the R-1-A or the R-5-D District requires the same special exception approval from the Board. The standards applicable to the application are the same for both zone districts. The Board notes that, as proposed by the applicant, portions of the new construction are located on both sides of the zone boundary line.

9. The design of the addition as proposed by the applicant, including the intensive landscaping and screening proposed, are such that the addition will not significantly impact the surrounding residences. The exterior facade has been designed, and building materials selected to match the existing architecture of The Home. The elevations have been articulated to reduce the impact of the length of the building.

10. The cooling tower is the only mechanical equipment to be located outside the building and will meet the standards of the Building Code. Any noise which would come from the cooling tower is likely to be lower than and be subsumed by the background noise already emanating from traffic and activity along the Connecticut Avenue corridor.

11. The loading dock has been designed so that it is enclosed and in a location which faces away from the surrounding residences and is buffered by a substantial landscaped screen.

12. The supplementary information submitted by the applicant demonstrates that access is available to the loading dock by trucks which would use that facility.

13. The building contains 93,778.75 square feet of gross floor area, less than 100,000 square feet of gross floor area as that term is defined in the Zoning Regulations. The building is required to have one 30-foot loading berth, one 20-foot service delivery loading space and one 100 square foot loading platform. All of these spaces are shown on the plan marked as Exhibit No. 123C of the record.

14. The principal entrance to The Home is and will remain located on Connecticut Avenue. The entrance located at the rear will be open to the public only between the hours of 7:00 a.m. to 4:00 p.m. At all other times, access will be limited to employees or for emergency access.

15. The design of the addition is constrained by a large number of complicated and interrelated requirements of The Home, including municipal building and licensing requirements, as well as the specific functional needs of the existing and future residents. The alternate plan submitted by the opposition may contain space for the same number of beds as proposed by the applicant. However,

the applicant identified a number of significant deficiencies in that plan which convinced the Board that the alternate plan is not a viable solution which meets the needs and requirements of The Home.

16. The applicant is further not required to demonstrate that there are alternative ways to construct the addition to the building which may have greater or lesser impacts than the design proposed in the application. The applicant is only required to demonstrate that the addition it has proposed meets the specific standards of Sections 218 and 219 of the Zoning Regulations.

17. The conditions suggested by the ANC, to which the applicant has agreed, will minimize any adverse impacts because of construction or operation of the addition to The Home.

18. With respect to the ANC's recommendation regarding prohibition of bus parking, the Board agrees and finds that it is reasonable to restrict the applicant to park only mini-vans on the property. The vans should be parked on the northwest corner of the parking area in a location where they are substantially distant from any of the surrounding properties. If parked in the proposed location, small vans are not likely to become objectionable or obstrusive.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking two special exceptions, the granting of which requires that the proposal meet the requirements set forth in 11 DCMR 218, 219 and 3108.1, that the relief requested can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and that the relief will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has met the requisite burden of proof. Based on the testimony and evidence of record, the Board concludes that there are no other properties containing a community-based residential facility in the same square or within 1,000 feet. The Board concludes that the addition, as proposed, will meet all code and licensing requirements. The Board concludes that The Home and the addition will not have an adverse impact on surrounding properties because of traffic, noise, operations or the number of similar facilities in the area. The Board concludes that the issuance of a certificate of need from the State Health Planning and Development Agency is evidence that the program goals and objectives of the District cannot be achieved by a facility of

a smaller size at the subject location and that there is no other reasonable alternative to meet the program needs of that area of the District.

The Board notes with favor the report of ANC 3F, in which the ANC recommended approval of the application fashioning a set of conditions to apply to the construction of The Home and its operation thereafter. The Board further notes the recommendation of the Office of Planning to approve the application incorporating the conditions of the ANC. The Board is in agreement with the ANC recommendations, with the exception of its proposal to exclude all bus parking from the property, as addressed in Finding of Fact No. 18 above.

The Board concludes that granting the special exception will be in harmony with the general intent and purpose of the Zoning Regulations and Map and, as hereinafter conditioned, will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. Accordingly, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Construction shall be in accordance with the plans marked as Exhibit Nos. 28 and 123 of the record.
2. **Advisory Committee**
 - A. The Home shall establish an Advisory Committee that includes representatives of the community surrounding The Home including:
 - i. One representative from Advisory Neighborhood Commission 3F;
 - ii. One representative from the 3400 block of Fessenden Street;
 - iii. One representative of the owners of property nearby or adjacent to the eastern boundary of The Home's property; and
 - iv. Two representatives of The Home's Board of Trustees and the Chief Executive Officer of the Methodist Home.
 - B. The Advisory Committee shall meet on a regular basis to be determined by the Committee to discuss and make recommendations concerning construction operations, and the operations of The Home impacting on the community.

- C. The Home shall send a notice of all such meetings to property owners within 200 feet of the site.
- D. The Advisory Committee shall meet regularly during the construction phase of the project to address construction-related issues and thereafter, no fewer than three times each year unless otherwise agreed to by the committee.
- E. The Home will give great weight to the views and recommendations of the Advisory Committee.

3. Landscaping

- A. The landscape plan that shall be implemented by The Home, which includes a list of specific plant, tree and shrub types and their sizes, is identified as part of Exhibit No. 28 in the record.
- B. The Home shall make every effort to maintain all landscaping on its property in a healthy and growing condition. The Home shall replace any vegetation that is planted in connection with the landscape plan and fails to survive, within six months of the death of such vegetation, as long as weather conditions and sound horticultural practice permit a replanting within such time frame. If a change or substitution to the landscape plan is required in order to address site or other conditions, including plant unavailability, the Advisory Committee shall be consulted about such a change.
- C. If feasible, the large spruce tree near the Fessenden Street driveway of The Home shall be relocated to another location on the property such that it will afford similar screening of the site from the same houses that are currently screened by the tree. If it is not feasible to relocate the existing tree, it will be replaced with another spruce tree of the maximum size available to the applicant.

4. Loading Dock

The Home shall locate its loading dock inside its addition with the loading dock doors facing Connecticut Avenue, N.W. rather than the 3400 block of Fessenden Street. The Home's loading, trash pick-up, and deliveries shall be accomplished inside the loading dock

except that the actual emptying of the refuse receptacles by the refuse collection company shall occur immediately outside the building. The applicant shall not cause or permit any trash or other storage outside the loading dock. The loading dock shall have roll-up doors that shall be kept closed except when the loading dock is being used for deliveries or trash pick-up.

5. HVAC and Cooling Tower

The Home shall locate its central heating, ventilation and air conditioning (HVAC) equipment for its addition inside the existing facility and shall provide sufficient noise insulation so that the central HVAC equipment shall not be heard outside the building. The Home shall screen its proposed outside condensing unit or cooling tower from view and shall acoustically baffle it in order to reduce noise levels at the property lines to comply with the 55 decibel (A-weighted) at night and 60 decibels during the day, which are the general limits set forth in D.C. regulations for noise in a residential neighborhood at night [D.C. Law No. 2-53, as amended, 20 DCMR 3001.1 (1984)].

6. Noise

The Home shall operate its facility so as to comply in all its activities (including the operation of any mechanical equipment) with the general noise limits in the D.C. Noise Control Act (D.C. Law No. 2-53, as amended) for noise made or audible in residential districts, namely 60 decibels (A-weighted) daytime and 55 decibels (A-weighted) at night [20 DCMR 3001.1 (1984)].

7. Lighting

All site lighting shall be mounted and directed inward to the facility from the perimeter of the site. The Home shall not permit any lighting fixtures on its premises to be directed into the neighborhood. Samples of proposed outside lighting fixtures shall be presented to the Advisory Committee for review and comment prior to its installation.

8. Rodent Control

The Home shall control rodents on its site in part by keeping trash and garbage within the loading area. The

Home shall continue to employ a competent and licensed exterminator to service the site on a regular basis to prevent rodent or similar problems from developing at the site.

9. Operational Features of the Home

- A. Entrance - The principal entrance to The Home shall be on the Connecticut Avenue (west) side of the facility. All other entrances to the facility shall be closed from 4:00 p.m. to 7:00 a.m. although they will be available for emergency access or for employee access through the use of a card key or other controlled access system.
- B. Rear (East) Driveway - The Home shall install a gate at the Ellicott Street end of its existing driveway off of Ellicott Street. This gate shall be operated by a key, keycard or similar device which shall be issued only to staff and residents of the Methodist Home, so that access through the gate shall be restricted to such persons. The traffic through this gate shall be egress only, except in cases of fire or other emergency. The driveway shall be 14 feet in width at its intersection with Ellicott Street, N.W.
- C. Visiting Hours - The visiting hours for the Health Care Center shall be from 8:00 a.m. to 8:00 p.m. daily, as required by D.C. law. The Gift Shop shall be open for a maximum of three hours daily.

10. Maintenance of D.C. Public Space and the National Park Service parcel at the western end of The Home's site. The Home shall work with the District of Columbia Department of Public Works (DPW) and the National Park Service to implement a plan to remove trash, debris and dead or undersirable vegetation from the portion of the public space and adjacent National Park Service parcel identified in Exhibit No. 28, Neighborhood Map (Exhibit X) of the record.

The plan to be presented to the National Park Service and the District of Columbia Department of Public Works (DPW) is as follows:

- A. A strip of land -- several feet wide -- immediately adjacent to the Fessenden Street curb line shall be cut to the ground and maintained as grass, round

cover or some other living erosion-resistant material.

- B. The remainder of the wooded area up to applicant's property line shall be cleaned of junk and debris.
- C. In implementing the plan, The Home shall retain a visual barrier between the Fessenden Street houses and The Home's lawn.
- D. The area bordering the new driveway along the northwest property boundary shall be planted with evergreen trees or shrubs so that there is a green barrier in the winter.
- E. If the National Park Service and DPW do not maintain their respective portions of the area, The Home will maintain the area in good order just as it maintains all of its property.
- F. This plan is subject to the approval of the DPW and the National Park Service since it affects publicly-owned property.

11. Vendor Deliveries

The Home shall not allow deliveries by vendors or trash pick-up prior to 7:00 a.m., as required under the applicable D.C. regulations. The Home shall maintain regular contact with the vendors and the refuse collection company to enforce this restriction.

12. Construction Activities

During the construction phase, The Home shall limit the hours of construction to 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. The Home shall not cause or permit any construction work at its site on Sundays except in the case of an emergency which could cause damage to the site or present a hazard for the community.

The Home shall locate any equipment, materials and receptacles or construction waste and portable toilets on the subject property, not on any public space. The Home shall locate any portable toilets used by the Methodist Home or its contractors or agent behind any existing landscaping, walls or portions of the building that will

screen them from the view of neighboring property owners and passersby.

13. Parking

- A. The Home shall provide 48 marked parking spaces at the facility.
- B. The Home shall plant and maintain on its property screening of these 48 parking spaces from neighborhood view with adequate trees and shrubs (as provided in the Landscaping Plan of Exhibit No. 28 of the record).
- C. In order to address commuter parking problems that are unrelated to The Home and its operation, the Home shall unreservedly support any neighborhood requests for residentially-restricted parking on the site side of Fessenden Street between 34th and 36th Streets N.W.

14. Construction

The Home does not plan to begin the construction of any further additions to The Home prior to the year 2000 although unforeseen events may affect the need for new construction. The Home shall discuss any potential plans for any proposed addition with the Advisory Committee for its review and comment, a minimum of eight to nine months before The Home's filing of such plans with the Office of the Zoning Administrator to initiate the Board of Zoning Adjustment review process.

The Home, however, shall have the right to process plans for any federally or locally mandated improvements to the building or for the construction of any portion of the building that is lost through a casualty without an eight to nine month review by the Advisory Committee.

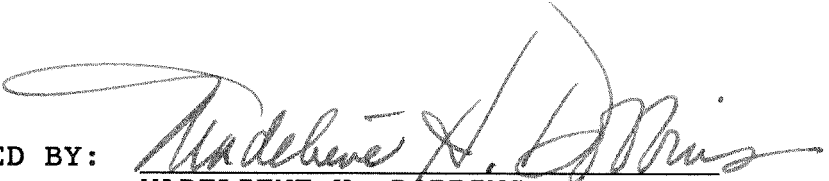
15. Bus Parking

The Home shall not cause or permit any buses to be parked on the subject property. Mini-vans, caravans, etc., owned by The Home shall be parked in the parking spaces closest to the National Park Service parcel at the western end of the site.

VOTE: 3-0 (Susan Morgan Hinton, Angel F. Clarens, and Laura M. Richards to adopt the proposed order, with amendments; Maybelle Taylor Bennett not present, not voting; Sheila Cross Reid not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: _____

JUN 30 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15831ord/TWR/RCL/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15831

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on JUN 30 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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John T.; Epting, Esquire
Wilkes, Artis, Hedrick & Lane
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Washington, D. C. 20006

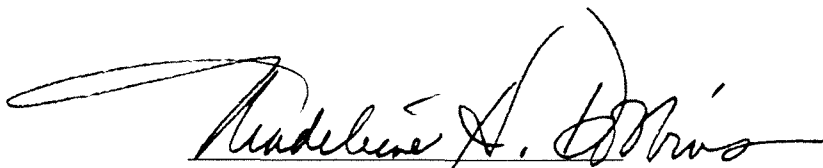
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MADELIENE H. DOBBINS
Director

DATE: JUN 30 1997

attestation/kjw